Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-175
Separate Affiliate Requirements of Section	)	
64.1903 of the Commission's Rules	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") submits its Comments to the Notice of Proposed Rulemaking ("*NPRM*") released on September 14, 2001, in the referenced docket, under FCC 01-261.

In these Comments, Sprint supports elimination of the separate affiliate rules.[1] The separate affiliate rules were originally created to keep independent incumbent LECs ("IILECs") from favoring their own long distance entities over non-affiliated long distance providers through cost misallocation, unlawful discrimination, or a price squeeze. Experience has shown that the ability of IILECs to adversely impact long distance competition is not as great as contemplated when these rules were first enacted in 1984. To the extent that rules are needed to guard against these malfeasances, they are adequately covered by the Commission's cost allocation rules, equal access and non-discrimination requirements and enforcement mechanisms. Further, while there is ample reason to distinguish between the BOCs and IILECs in this regard, there is no basis on which to treat any IILECs different from other IILECs.

[1] 47 CFR §64.1901-03.

I. INTRODUCTION.

In the *Competitive Carrier Fifth Report and Order,*[2] the Commission addressed the issue of IILECs providing interstate services. The Commission concluded that IILECs would be incented to use their position as monopoly local service providers to favor their own long distance services over those of unaffiliated IXCs. One method an IILEC might use to do this would be to improperly shift costs from long distance services to local services. This would result in the local ratepayer subsidizing long distance service while allowing the IILEC to lower long distance prices, undercutting IXC competitors. Another method an IILEC might use would be to provide non-affiliated IXCs poorer quality access to the IILEC's local service, or otherwise discriminate against rival IXCs on terms other than price. Finally, an IILEC might use the fact that rival IXCs must pay access charges containing implicit subsidies to "price squeeze" the IXC by offering toll services at prices above the IILEC's cost, but below access rates charged to the rival IXCs.

The Commission enacted rules to protect against cost-shifting and anti-competitive conduct by allowing an IILEC's long distance affiliate to enjoy nondominant treatment only if the affiliate (i) maintained separate books of account; (ii) did not jointly own with the IILEC transmission and switching facilities; and (iii) acquired services from the IILEC under tariffs.[3] After passage of the Telecommunications Act of 1996 (the "'96 Act"), the Commission reviewed these rules and decided to continue to require IILECs to offer long distance services through a separate affiliate as established in the *Competitive Carrier Fifth Report and Order*.[4] The Commission subsequently relaxed rules on IILECs who acquired long

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[2] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Competitive Carrier Fifth Report and Order*").
[3] *Id.* at 1198, ¶9.
[4] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area* and *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket

distance services through resale, rather than through their own facilities, by requiring such IILECs to offer long distance service through a separate division instead of a separate corporate entity.[5] In the *NPRM*, the Commission again seeks to determine whether the benefits of the separate affiliate requirement are worth the costs.

II. IILECS ARE UNABLE TO AFFECT LONG DISTANCE COMPETITION.

Due, among other reasons, to the limited size and scope of IILEC service areas, IILECs are unable to disadvantage IXC competitors in providing in-region, interstate services. For example, unlike the BOCs, Sprint's service territories are widely dispersed and largely rural. Sprint operates local service in 18 states from Florida to Washington. Sprint's IILECs are rural telephone companies, as defined in the Act, in all states except Nevada.[6] In addition, unlike the BOCs, it is much more rare for an interstate call to originate and terminate in a specific IILEC's territory. Dispersion lessens the potential to affect competition, meaning that the IILECs have less opportunity to use a local-long distance consolidation to harm competition.[7] Moreover, the IILECs simply do not have the scale to affect the IXC market. The BOCs control approximately 7/8 of the nation's switched access lines, located across broad and contiguous geographical areas. This leaves only about 1/8 of the lines to the remaining roughly 1300 industry carriers.[8] The scope of the IILECs' local operations is too limited to realistically allow them to hinder the overall operations of the

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Nos. 96-149 and 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15841-64, ¶¶143-192 (1997) ("*LEC Classification Order*")

[5] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area* and *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149 and 96-61, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd10771 (1999) ("*Second Reconsideration Order*").

[6] The Act refers to the Communications Act of 1934, as amended. Rural telephone company is defined at 47 U.S.C. §153 (37).

[7] *United States v. GTE Corp.*, 603 F. Supp 730, 734 (D.D.C. 1984)

[8] Based on USF loops in October 1, 2001 NECA USF Filing, Tab 6.

much larger long distance competitors. IILECs are simply not capable of driving a rival IXC out of a market and sustaining toll rates above competitive levels.[9]

III. THE SEPARATE AFFILIATE RULES ARE NOT NEEDED TO PROTECT AGAINST POTENTIAL IILEC HARMS.

Current Commission rules adequately protect against concerns connected with IILEC provision of long distance service without requiring IILECs to provide such service through a separate affiliate.

A. The Separate Affiliate Rules Are Not Necessary To Combat Cost Misallocation.

The Commission's cost allocation rules adequately cover this issue by requiring that IILECs separate regulated costs (e.g. costs attributable to local service) from nonregulated costs (e.g. costs attributable to interstate toll service).[10] These cost allocation rules contain specific principles for IILECs to follow in determining the proper allocation of costs between regulated and nonregulated activities. Further, Rule 64.901(c) specifically states that a carrier " may not use services that are not competitive to subsidize services subject to competition."[11]

The cost allocation rules accomplish the same aim as the separate affiliate rules. The only difference is that the existence of a separate affiliate arguably makes transactions marginally more visible. Over time, this additional layer of visibility has proven unnecessary because there have been virtually no substantiated complaints against IILECs on this issue. Opponents may argue that, in the absence of a separate affiliate, an IILEC will violate the cost allocation rules, because an investigation will be more difficult. Given the

[9] Congress so much as acknowledged this in the '96 Act by distinguishing between the BOCs and the IILECs in crafting long distance entry provisions. See 47 USC §§ 271-72.
[10] *See* 47 CFR §64.901.
[11] This rule reiterates language in Section 254(k) of the Act.

Commission's powers to hear complaints, grant damages and injunctive relief, and impose sanctions and forfeitures, an IILEC would be unwise to risk such penalties in exchange for the relatively small payoff to be gained in the long distance market.[12]

B. A Separate Affiliate Is Not Necessary To Restrain Discrimination in the Provision of Access Services.

The separate affiliate rules are not needed to prevent IILECs from engaging in discriminatory behavior, such as providing poorer quality access or imposing unnecessary delays in providing access service. This behavior is constrained by the equal access rules, which apply to the IILECs.[13] Further, the '96 Act preserved the same equal access and non-discriminatory interconnection restrictions and obligations that existed prior to the passage of the '96 Act.[14] Again, there have been virtually no complaints of discriminatory behavior against the IILECs. There is simply no good reason to keep the separate affiliate rules in place to curb violations that experience has shown are not likely to occur and where the conduct involved is addressed in other statutory provisions and other Commission rules.

C. There are More Effective Tools Than a Separate Affiliate to Prevent Price Squeezes.

Requiring a separate affiliate is not an effective method in stopping attempts at a price squeeze. Other regulatory tools are more effective in this regard. Violations of Sections 201 and 202 can be addressed through the complaint process and enforcement of anti-trust laws.[15] Moreover, given the existence of the Commission's cost accounting rules, the existence of a separate subsidiary requirement in this context is superfluous in preventing or detecting such conduct.

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[12] *See* 47 U.S.C. §§ 154(i), 206-209, and 503.
[13] *LEC Classification Order* at 15855, ¶172.
[14] 47 U.S.C. § 251(g).
[15] *LEC Classification Order* at 15831, ¶128.

IV. THERE IS NO BASIS FOR DIVIDING THE IILECS INTO SEPARATE CATEGORIES.

The Commission asks for comment regarding whether the use of a separate corporate division should be limited to certain categories of IILECs.[16] The Commission asks what factors would justify different treatment among IILECs, and asks whether special treatment should be given to rural telephone companies or to carriers identified in Section 251(f)(2) of the Act as presumptively exempt from Section 251(c) requirements.[17]

There is no legal or rational justification to using two percent of access lines to divide IILECs for purposes of the separate affiliate rules. Two percent is simply not relevant to the issue of IILECs providing in-region, interstate long distance service. The only use of two percent of the nation's access lines as a threshold in the Act is in Section 251(f)(2), in which carriers with less than two percent of the nation's access lines may petition a State commission for relief from interconnection obligations.

In the matter at hand, the concern is whether the large IXCs will be disadvantaged by IILEC entry into long distance without a separate affiliate. There is no relevance that can be drawn from section 251(f)(2) to the two percent threshold in this context. While a threshold of two percent may have unique applicability and relevance in interconnection, it is vitally important that the Commission not apply this figure to other situations for the sake of mere convenience. To do so would create regulation that is, at best, arbitrary and capricious and, at worst, competitively non-neutral.

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[16] *NPRM* at ¶17.

[17] This question is somewhat ambiguous because rural telephone companies were singled out in Section *251(f)(1)* as presumptively exempt from 251(c) requirements, while carriers serving less than two percent of access lines nationwide were identified in 251(f)(2) as being allowed to petition a state commission for a suspension or modification of 251(b) or (c) requirements. For purposes of this discussion, we will assume that the reference to 251(f)(2) was meant to refer to two-percent carriers.

In fact, in the context of LECs offering long distance, there have always been two categories: BOCs and IILECs. This has been the case since the early 1980s, when the Modified Final Judgment applied to the BOCs and the *Competitive Carrier Fifth Report and Order* applied to the IILECs. It was the case upon passage of the '96 Act, where Sections 271 and 272 applied to BOC long distance entry and no distinctions divided the IILECs in the context of providing long distance services. It remains the case today.

Therefore, with regard to the issue of separate affiliates, the question the Commission must address is whether there is any reason that a threshold such as two percent makes sense as a differentiating factor with regard to the activities of carriers. The Commission itself has already answered this question. In the *LEC Classification Order,* the Commission stated that "neither a carrier's size nor the geographic characteristics of its service area" affects a carrier's ability and incentives to properly (or improperly) allocate costs.[18]

Some might attempt to argue that while a carrier's size does not affect its ability or incentive, its size does have an impact on the overall negative effect of any inappropriate actions; that is, the more lines served by a carrier the more cumulative negative effect the carrier's inappropriate actions (if there are any) might have. While this argument is superficially appealing it is factually incorrect, because it assumes that all lines served by a carrier represent the same opportunity for inappropriate behavior. In fact, there are a number of different factors that affect any carrier's ability to act opportunistically and these factors vary from market to market, from state to state, and from carrier to carrier. The main factors are traffic patterns and relative access charges.

If the two-percent threshold were intended to act as some form of representative delineator among these various factors, it is equally inappropriate. Looking at traffic patterns as one such factor, it is reasonable to assume that (all else held equal) the possibility for opportunistic behavior on the part of a carrier increases with the percent of that carrier's inter-exchange calls that originate and terminate to a carrier's own customers; for example, a long-distance call between an SBC customer in Kansas City and an SBC customer in Dallas. Yet there is no evidence that the percent of inter-exchange calls that originate and terminate among Sprint's local customers is any greater than the percent that originate and terminate among Alltel's local customers, or Frontier's local customers, since both of those carriers (like Sprint) are spread over several different states and serve relatively few metro areas. Yet both of those companies fall below an arbitrary two-percent threshold.

In fact, there are many dimensions on which Sprint is extremely similar to IILECs that fall below the two-percent line:

- Sprint is certified as a rural carrier in 17 of 18 states in which it operates.
- Sprint's average density (lines per square mile) is less than ½ the BOCs' average density, as are the densities of most other IILECS (except for Cincinnati Bell).
- Of the thirty largest metropolitan areas in the U.S., only one has an IILEC as the primary provider of local service: Cincinnati Bell in Cincinnati (ranked #23). Sprint does not enter the list until number thirty-three (Las Vegas), which is Sprint's only entry in the top fifty.
- Despite the fact that the combined Sprint Local Telephone companies serve more than two percent of access lines nationwide, in many of Sprint's states—Nebraska, Ohio, Washington, Oregon, South Carolina, Texas, Wyoming--Sprint is not even the largest independent ILEC in operation.

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[18] *LEC Classification Order* at 15860, ¶183.

This last point has special relevance because some factors that affect the possibility of opportunistic behavior vary from state to state, such as relatively high access charges. As such, it is incorrect to suggest that a company with slightly more than 2% of lines nationwide represents a greater concern than another company with slightly fewer lines, especially if the other company has more lines in states with higher access charges.

V. THE COMMISSION SHOULD PREEMPT THE STATES FROM REQUIRING A SEPARATE AFFILIATE.

If the Commission decides to eliminate the separate affiliate rules, the Commission should preempt the states from requiring a separate affiliate for intrastate long distance. Enacting intrastate separate affiliate requirements would simply replace one unnecessary regulation with another and thwart the Commission's goals of affording regulatory relief to IILECs and spurring facility-based entry by resellers.

VI. CONCLUSION.

The separate affiliate rules for IILECs appear never to have been needed to serve the purpose for which they were created, and it is clearly time to eliminate these rules. The harms that they were created to prevent, cost misallocation, discrimination and price squeezes, are either adequately covered by other rules, or simply do not provide a threat. Cost misallocation is restrained by the Commission's rules requiring allocation of regulated and non-regulated costs. Non-price discrimination is stopped by equal access and non-discrimination rules. Any ability the IILECs have to price squeeze in the interstate long distance market is effectively dealt with by Commission rules without the need for the IILEC separate affiliate requirement. The Commission's powers to fine, sanction, enjoin, and award damages serve as a deterrent to misbehavior such that a separate affiliate is not warranted. Finally, all IILECs should be treated equally. There is no rational basis to apply disparate treatment based on whether an IILEC is rural or serves less than two percent of the nation's access lines.

Respectfully submitted,

SPRINT CORPORATION

By __________//s//________

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CERTIFICATE OF SERVICE

I, Joyce Y. Walker, hereby certify that I have on this 1st day of November 2001, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing comments of Sprint Corporation, "In the Matter of 2000 Biennial Regulatory Review – Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, filed this date with the Secretary, Federal Communications Commission.

//s//
Joyce Y. Walker